

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PEIERLS FOUNDATION, INC. and
E. JEFFREY PEIERLS, individually
and as trustee,

Plaintiffs,

v.

JAMES E. RURKA, MARK SKALETSKY,
PAUL J. MELLETT,
RICHARD ALDRICH,
KATE BINGHAM,
CHARLES W. NEWHALL III
DAVID SCHNELL, and
JOHN P. WALKER,

Defendants.

Civil Action No. 03 CV 12213 EFH

DEFENDANTS' MOTION TO DISMISS

James Rurka, Mark Skaletsky, Paul J. Mellett, Richard Aldrich, Kate Bingham, Charles W. Newhall III, David Schnell, and John P. Walker ("Defendants") hereby move to dismiss the Complaint of Plaintiffs Jeffrey Peierls, individually and as trustee, and the Peierls Foundation, Inc., pursuant to Fed. R. Civ. P. 12(b)(6). In support of their motion, Defendants rely upon the memorandum of fact and law and the Affidavit of Matthew C. Applebaum, Esq. filed herewith.

WHEREFORE, Defendants request that their Motion to Dismiss Plaintiffs' Complaint be allowed and that the Complaint be dismissed in its entirety.

-2-

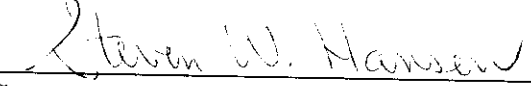
REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), and because they believe that oral argument will assist the Court in resolving this motion, Defendants request that this motion be set down for oral argument.

Respectfully submitted,

**JAMES RURKA,
MARK SKALETISKY, PAUL J.
MELLETT, RICHARD ALDRICH,
KATE BINGHAM, CHARLES W.
NEWHALL III, DAVID SCHNELL,
AND JOHN P. WALKER,**

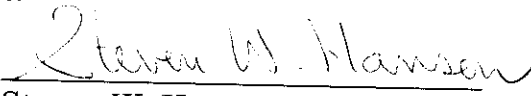
By their attorneys,


Steven W. Hansen (BBO# 220820)
Matthew C. Applebaum (BBO#
653606)
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110
(617) 951-8000

Dated: February 17, 2004.

LOCAL RULE 7.1 CERTIFICATION

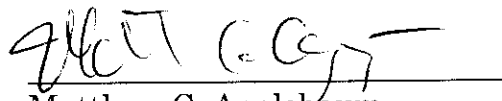
The undersigned hereby certifies that counsel for Defendants conferred in good faith with counsel for the Plaintiffs on February 17, 2004 in an attempt to resolve or narrow the issues involved in this Motion, but the parties were unable to reach agreement.


Steven W. Hansen

-3-

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon counsel for Plaintiffs, David E. Marder, Robins, Kaplan, Miller & Ciresi, L.L.P., 111 Huntington Ave., Boston MA 02199, by hand on February 17, 2004.


Matthew C. Applebaum